

CUSTOMS CODE OF THE EURASIAN ECONOMIC UNION: THE BASIS OF CUSTOMS RELATIONS

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Abstract: *A brief overview of the changes in customs regulations in the Eurasian Economic Union is provided in this article. The author makes the attempt of analysing of the Customs Code of the Eurasian Economic Union in comparison with the Customs Code of the Customs Union. The proposal on the modification of the Customs Code is made.*

Keywords: *customs regulations, customs policy, integration, customs union, eurasian economic union*

Introduction

The Customs Code is one of the fundamental legal acts in the sphere of customs relations and international logistics of each of the states or integration associations. The analysis of the provisions of this document allows determining the level of development of customs and international logistics of these states or integration associations. It should be noted that there aren't a lot of publications which are connected to the present day customs regulation of the Eurasian Economic Union.

The Treaty on the Customs Code of the Eurasian Economic Union (hereinafter - the Treaty on the CC EAEU) of April 11, 2017 was developed within the framework of the provisions of Article 32 of the Treaty on the Eurasian Economic Union of May 29, 2014 and is applied in the territory of the EAEU from January 1, 2018. [2]

It should be noted that the Treaty on the CC EAEU belongs to the category of international treaties and, accordingly, has the highest legal force in relation to other acts of the legislation of the Republic of Belarus and other countries of the EAEU.

The purpose of the development of the Treaty on the CC EAEU was to ensure uniform customs regulation in the EAEU.

Unlike the Agreement on the Customs Code of the Customs Union, the Treaty on the CC EAEU contains a direct indication that this agreement is part of the EAEU law and takes precedence over other international agreements that are part of the EAEU law regulating customs legal relations, with the exception of the EAEU Treaty of May 29, 2014. [1]

Structure of the customs code

The Treaty on the CC EAEU has three annexes. In addition to the CC EAEU there are separate annexes:

- (1) The list of international treaties entering into the EAEU law terminating in connection with the entry into force of the Treaty on the CC EAEU;
- (2) The list of provisions of international treaties included in the law of the EAEU, which are recognized as invalid in connection with the entry into force of the Treaty on the CC EAEU.

The inclusion in the main Treaty of references to documents and their provisions that expire in connection with the entry into force of this Treaty is the established normative practice of the Eurasian Economic Commission (EEC).

It should be noted that in the above lists there is an additional division according to the criteria:

- the effective date of the Treaty on the CC EAEU;
- the effective date of the relevant EEC decision.

These criteria indicate that the CC EAEU includes the provisions of a number of international treaties that are part of the EAEU law, and is not entirely an act of direct action, and has reference rules on certain provisions, including those of EEC decisions.

Unlike the Customs Code of the Customs Union (CC CU), the CC EAEU is not divided into a general and a special part. We believe the absence of this division is positive from a practical point of view, since usually the division of the document into a general and a special part is exclusively doctrinal.

It should also be noted that quantitatively, the CC EAEU has one more section than the CC CU (9 sections versus 8). At the same time, there are two new sections in the CC EAEU:

- Section VII "Customs authorities";
- Section VIII "Activities in the field of customs. Authorized Economic Operator".

In this case, we believe that the legislators have identified separate sections for the subjects of customs legal relations, since the issues of organization of work and interaction of customs authorities within the framework of the EAEU are, of course, strategic, and issues of the activities of economic entities in the sphere of customs ensure the receipt of customs payments and the development of economies of states participants of the EAEU.

It should be noted that in comparison with the CC CU in the CC EAEU, the questions of consultation matters; mutual relations of customs bodies with participants of foreign economic activity and persons; carrying out activities in the field of customs; information systems and information technologies; customs statistics are included in Section VII "Customs Authorities" as separate articles.

Innovations of the customs code

One of the innovations of the CC EAEU is the normative consolidation of the fact that the common customs regulation is carried out in the EAEU, which implies the

absence of any exemptions or restrictions for any member state of the EAEU in the field of customs regulation. At the same time, legislators have identified a closed list of legal relations that constitute a common customs regulation:

- establishment of order and conditions:
 - (1) the movement of goods across the customs border of the Union,
 - (2) their location and
 - (3) use in the customs territory of the Union or outside it;
- establishment of the procedure for performing customs operations related to:
 - (1) the arrival of goods in the customs territory of the Union,
 - (2) their departure from the customs territory of the Union,
 - (3) temporary storage of goods,
 - (4) their customs declaration and release,
 - (5) other customs operations;
- establishment of the payment procedure:
 - (1) customs payments,
 - (2) special, anti-dumping, countervailing duties;
- establishment of the procedure for conducting customs control,
- as well as the regulation of power relationships between customs authorities and persons exercising the rights to own, use and (or) dispose of goods on the customs territory of the EAEU or outside it.

The above list is broader than the provisions of the CC CU.

Also, special attention should be paid to the acts, in accordance with which the customs regulation is carried out in the EAEU. The list of these acts is more extensive in comparison with the CC CU.

These acts include:

- international agreements, including the CC EAEU;
- acts forming the law of the EAEU (hereinafter, it is specified that these acts are from the sphere of customs regulation);
- The Treaty on the EAEU dated May 29, 2014.

In this list, the reference rule of law "acts that make the EAEU law" attracts attention.

In accordance with the provisions of Article 6 of the EAEU Treaty, the law of the EAEU is:

- The Treaty on the EAEU;
- international treaties within the Union;
- international agreements of the Union with a third party;
- decisions and orders of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council and the Eurasian Economic Commission, adopted within the framework of their powers stipulated by the Treaty on the EAEU and international treaties within the framework of the EAEU.

Proceeding from these provisions, we believe that in order to avoid duplication of information and complicate perceptions, it was sufficient to mention in the CC of the EAEU a reference to the acts that make the EAEU law with the corresponding specification of their scope - customs regulation.

It should also be noted that the decisions of the Supreme Eurasian Economic

Council and the Eurasian Intergovernmental Council are subject to execution by Member States in the manner prescribed by their national legislation. That is, in cases when these decisions are made in the sphere of customs regulation and their further execution, if there are differences in the procedures for their implementation in the EAEU member states, the principle of the unity of customs regulation may be violated. In our opinion, this may be one of the gaps in the legislation in the CC EAEU and adversely affect law enforcement practice.

One of the innovations of the EAEU CC is also the normative consolidation of the principles on which customs regulation is based:

- equality of parties for the movement of goods across the customs border of the EAEU,
- legibility, clarity and consistency of customs operations,
- publicity in the development and application of international treaties and instruments in the field of customs regulation and their harmonization with the rules of international law,
- application of modern methods of customs control,
- maximum use of information technology in the activities of customs authorities.

The availability of these principles, in our opinion, indicates the fundamental nature of the EAEU CC and its correlation with the provisions of the Kyoto Convention (On Simplification and Harmonization of Customs Procedures), and will also have a beneficial effect on both law enforcement and judicial practice.

Also, legislators retained the possibility of regulating customs legal relations by the legislation of the EAEU member states on customs regulation in cases where these legal relations are not regulated by international treaties and acts in the field of customs regulation.

Regarding the terminology, new terms appeared in the EAEU CC, for example, such as:

“information resources of customs authorities” means organised set of documented information (databases, other data arrays) contained in the information systems of customs authorities;

“international treaties of the Member States with a third party” means a treaty concluded by one of the Member States with a third party or an international treaty with a third party where any or all Member States act as Parties;

“trade remedies” means safeguard, anti-dumping, countervailing measures and other measures for the protection of internal market established in accordance with the Union Treaty, that may be imposed in respect of goods originating in third countries and imported into the customs territory of the Union;

“customs tariff regulatory measures” means the measures which are adopted in accordance with the EAEU Treaty in respect of the goods that are being (have been) imported into the customs territory of the Union and which include the application of the rates of import customs duties, tariff quotas, tariff preferences, tariff exemptions;

“preliminary information” means information in an electronic form on goods to be moved across the customs border of the EAEU, vehicles for international transportation carrying such goods, time and point of entry of goods in the customs territory of the

EAEU, passengers arriving in the customs territory of the EAEU.

We believe that one of the reasons for the presence of new definitions, as well as changes in the definitions used earlier, is the fact that a number of provisions that were previously defined by separate agreements within the framework of the EAEU were included in the EAEU CC.

In addition, in our opinion, the specification of a number of terms and the availability of new definitions will have a positive impact on the enforcement of the EAEU CC.

Noteworthy are the provisions on informing about international treaties and acts in the sphere of customs regulation. The innovation is the emphasis on the use of Internet segments. In particular, information is provided through the posting of the above regulatory documents, respectively, on the official website of the EAEU (recall that the official site of the EAEU is the site: <http://www.eaeunion.org/>) and official websites of customs authorities on the Internet (for example, at the official site of the State Customs Committee of the Republic of Belarus: <http://www.customs.gov.by/ru>). Thus, priority is given to the electronic form of information placement, in contrast to the printed form used in the CC CU.

It goes without saying, that the absence of a specific reference in the provisions of the EAEU CC for the printed form of information placement does not indicate the impossibility of using such a form. Moreover, the provisions of the EAEU CC provide for the use of "other publicly available ways of disseminating information".

At the same time, in our opinion, the priority of the electronic form of information placement imposes certain obligations on the EEC and customs authorities in terms of ensuring the security of the Internet segments declared in the EAEU CC. This security should be in the absence of the possibility of unauthorized changes to the legal acts placed on these sites.

The application of measures of the customs and tariff regulation, prohibitions and restrictions, measures to protect the domestic market, international treaties and acts in the field of customs regulation, legislative acts of the Member States in the field of taxation retained the linkage to the date of registration of the customs declaration or other customs documents.

At the same time, due to the possible establishment of customs declaration features at the national level that are different from those established by the EAEU CC, if two or more declarations are required for the goods, the above measures are applied as of the date of registration of the first declaration for goods.

The legislators paid special attention to the issue of compliance with prohibitions and restrictions. Directly the definition of the term "prohibitions and restrictions" is given in Article 2 of the EAEU CC: measures of non-tariff regulation applied in relation to goods transported across the customs border of the EAEU, including those introduced unilaterally in accordance with the EAEU Treaty, technical regulation measures, veterinary sanitary and quarantine phytosanitary measures, export control measures, including measures for military products, and radiation requirements established in accordance with the Treaty on the EAEU and (or) the legislation of the Member States. [2]

It should be noted that compliance with non-tariff regulatory measures, including

those introduced unilaterally, and technical regulation measures is confirmed in the cases and in the order determined by the EEC or the legislation of the Member States in accordance with the EAEU Treaty. The provisions of the decision of the Board of the EEC of April 21, 2015 No. 30 "On measures of non-tariff regulation" (hereinafter - the EEC Decision No. 30) are applied.

At the same time, compliance with export control measures, including measures for military products, is confirmed in cases and according to the procedure established in accordance with the laws of the Member States, by submitting documents and / or information confirming compliance with such measures. In the Republic of Belarus, the above cases and the procedure are established by the Law of the Republic of Belarus of May 11, 2016 No. 363-3 "On Export Control", as well as the Decree of the President of the Republic of Belarus No. 49 dated February 28, 2017 "On State Regulation in the Field of Export Control".

Compliance with sanitary, veterinary-sanitary and quarantine phytosanitary measures and radiation requirements is confirmed within the framework of the appropriate type of control (for example, radiation) in the manner prescribed by the EAEU Treaty and the EEC acts adopted in accordance with it, and (or) in the manner established by the legislation of members states. In the Agreement on the EAEU, the indicated types of measures are allocated in Section XI "Sanitary, veterinary-sanitary and quarantine phytosanitary measures" and Annex No. 12. The EEC acts include, for example, the decision of the EEC Board of June 30, 2017 No. 80 (effective from June 1, 2019) "On certificates of state registration of products". The acts of the legislation of the Member States include, for example, the Law of the Republic of Belarus No. 77-3 of December 25, 2005 "On Quarantine and Plant Protection".

The innovation of the EAEU CC is the emphasis of the legislators on the issues of providing preliminary information to the customs authorities.

Previously, these issues were regulated by the provisions of the Agreement on the provision and exchange of preliminary information on goods and vehicles transported across the customs border of the Customs Union (from May 21, 2010) (hereinafter referred to as the Agreement). A number of provisions of this Agreement are reflected in the provisions of the EAEU CC. Accordingly, upon the entry into force of the EAEU CC, this Agreement has become invalid.

It should be noted that the EAEU CC describes the objectives for which preliminary information is required:

- to assess risks and make preliminary decisions on the selection of objects, forms of customs control and measures to ensure the conduct of customs control, prior to the arrival of goods in the customs territory of the EAEU;
- to accelerate the commitment of customs operations and optimize the conduct of customs control. [2]

Based on these goals, the legislator identified two parts of the preliminary information:

- the composition of the preliminary information used by the customs authorities to assess risks and make preliminary decisions on the selection of objects, forms of customs control and measures to ensure the conduct of customs control;

- the composition of the preliminary information used by customs authorities to accelerate the commitment of customs operations and optimize the conduct of customs control.

It should be noted that the content of these formulations is determined by the EEC depending on the mode of transport by which the goods are transported. Also, the EEC determines the structure and format of such information, the procedure and timeframes for the provision of preliminary information, including preliminary information submitted in the form of an electronic document, the procedure for the formation and use of preliminary information in the form of an electronic document, persons who are either obliged to provide preliminary information to customs authorities.

In order to implement the above provisions, as of May 31, 2018, the EEC draft decisions have been developed within the framework of the Board of EEC:

- "On approval of the procedure for the provision of preliminary information when goods are imported into the customs territory of the Eurasian Economic Union by air transport";
- "On approval of the procedure for providing preliminary information when importing goods to the customs territory of the Eurasian Economic Union by road transport" (hereinafter - the Auto Project);
- "On approval of the procedure for the provision of preliminary information when goods are imported into the customs territory of the Eurasian Economic Union by rail";
- "On approval of the procedure for the provision of preliminary information when importing goods into the customs territory of the Eurasian Economic Union by water transport";
- "On approval of the procedure for registration of preliminary information when importing goods into the customs territory of the Eurasian Economic Union".

Also, an expert group within the EEC began work on a draft decision "On approval of the procedure for the use of preliminary information submitted as an electronic document when importing goods into the customs territory of the Eurasian Economic Union".

These draft decisions are planned for entry into force from October 1, 2018.

In accordance with the provisions of Article 445 of the EAEU CC, prior to the adoption of the above decisions, with prior information, guidance should be given to:

- motor transport - by the Decision of the Commission of the Customs Union (hereinafter - EEC) of December 9, 2011 No. 899;
- railway transport - By the decision of the Board of the EEC of September 17, 2013 No. 196;
- Air Transport - Decision of the Board of the EEC of December 1, 2015 No. 158.

In addition, EEC is recommended for use:

- the structure and format of preliminary information on goods imported into the customs territory of the EAEU by rail, in accordance with the Recommendation of the Board of EEC of November 10, 2015 No. 27;
- the structure and format of preliminary information on goods imported into the EAEU customs territory by air, in accordance with the Recommendation of the Board of the EEC of April 12, 2016 No. 5.

The EAEU CC also provides the possibility for submitting preliminary information in the form of an electronic document. For the purposes of defining the term “electronic document”, it is necessary to be guided by the provisions of the Law of the Republic of Belarus of December 28, 2009 No. 113-3 “On an electronic document and electronic digital signature”. In particular, an electronic document must meet the following requirements:

- to be created, processed, stored, transmitted and received with the help of technical, software and firmware;
- to have an appropriate structure (to consist of two integral parts - general and special);
- to be represented in a form that is accessible and understandable for human perception.

It should be noted that the preliminary information provided in the form of an electronic document can be used in the performance of customs operations related to:

- notification of the arrival of goods to the customs territory of the EAEU;
- placing goods for temporary storage;
- customs declaration;
- other customs operations defined by the EEC (for example, the Draft Auto provides for the possibility of using preliminary information when placing goods under the customs procedure for customs transit). [12]

In addition, preliminary information should be submitted to the customs authority on whose territory the planned place of movement of goods across the customs border of the EAEU is located.

It should be noted that in the EAEU CC, in addition to the previously used methods of transmitting preliminary information (through the interaction of the information system of the customs authorities of the Customs Union member states and the information systems of interested parties or through the web portals of the customs authorities of the Customs Union member states), which are determined by the EEC. Currently, other methods are not defined.

Special attention is paid to the language of the legislators, which provides preliminary information. Unlike the normative legal provisions of the Agreement previously used in the EAEC TC, the emphasis is, first of all, on the use of the Russian language. In addition, the innovation is an opportunity for a member state of the EAEU at the national level, by issuing an appropriate regulatory legal act, establishing the provision of preliminary information in English. In the Republic of Belarus is not currently established.

It should be noted that the provisions of the EAEU CC have expanded the list of cases where preliminary information on goods is not required. In addition to

- (1) goods for personal use, transported across the customs border of the EAEU by individuals;
- (2) goods sent in international mail;
- (3) goods transported to certain categories of foreign persons (defined in clause 1 of Article 296 of the EAEU CC);
- (4) goods moved for the liquidation of the consequences of natural disasters, accidents and disasters;
- (5) military cargo (the status of which is confirmed by a pass (military pass) issued

in accordance with the legislation of the Member State) the list is supplemented:

- (6) goods placed under a special customs procedure at the place of arrival;
- (7) goods of the Union transported through the territories of states that are not members of the Union;
- (8) goods transported across the customs border of the Union and imported into the territory of the FEZ, the limits of which fully or partially coincide with the sections of the customs border of the Union, if this is provided for by the legislation of the Member State in whose territory such FEZ was established;
- (9) other goods in cases defined by the EEC.

Also expanded the list of cases when imported goods cease to be under customs control.

In particular, the list is supplemented by cases:

- when goods are launched into outer space (with the exception of the returned space vehicle and goods in it);
- upon completion of the customs procedure of customs transit in relation to the goods of the Union transported through the territories of states that are not members of the Union;
- at the conclusion of the customs procedure of the free customs zone (hereinafter - FCZ) in the case of consumption of goods placed under the customs procedure of the FCZ and goods manufactured (received) from goods placed under the customs procedure of the FCZ, other than the expenditure of goods in the performance of transactions related to processing of goods (cases will be set by EEC);
- when paying and (or) collecting customs duties and taxes in respect of goods for personal use, imported with exemption from payment of customs duties and taxes, in the event of committing actions in violation of the conditions for importation into the customs territory established in accordance with paragraph 8 of Article 266 of the Customs Code of the EAEU of goods for personal use with exemption from payment of customs duties, taxes and (or) restrictions on the use and (or) disposal of these goods;
- with the release of vehicles of international transportation temporarily exported from the customs territory of the Union, with the exception of the vehicles of international transport considered to be conditionally released goods and vehicles of international carriage specified in the fourth paragraph of paragraphs 2 and 3 of subparagraph 2 of clause 2 of Article 272 of the EAEU CC, subparagraph 2 of clause 2 of Article 272 of the EAEU CC, with their return import to the customs territory of the Union;
- when paying and (or) collecting customs duties, taxes, special, anti-dumping, countervailing duties in respect of temporarily imported vehicles of international transportation in the event of circumstances specified in clause 8 of Article 279 of the EAEU CC;
- in other circumstances determined by the EEC and (or) established by the legislation of the Member States on customs regulation.

The expansion of the above list, in our opinion, is primarily due to the established law enforcement practice within the CU CC.

Conclusion

1. the analysis shows that the Customs Code of the EAEU is sufficiently progressive document and complies with international norms and standards in the field of customs regulation and international logistics.
2. From our point of view, one of the main innovations of the EAEU CC is the normative consolidation of the principles on which customs regulation is based.
3. Moreover, the priority of the electronic form of information should be mentioned. But we think that such form placement imposes certain obligations on the EEC and customs authorities in terms of ensuring the security of the Internet segments declared in the EAEU CC. This security should be in the absence of the possibility of unauthorized changes to the legal acts placed on these sites.
4. We believe that one of the reasons for the presence of new definitions, as well as changes in the definitions used earlier, is the fact that a number of provisions that were previously defined by separate agreements within the framework of the EAEU were included in the EAEU CC.
5. Also the key innovation of the EAEU CC is the emphasis of the legislators on the issues of providing preliminary information to the customs authorities.
6. Nevertheless in our opinion the Customs Code of the EAEU will be modified because of a lot of references to the national legislation.

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